LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
APR 15 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1328

JAMES AUBREY LANGHORNE, *Petitioner,*

v.

MAY LANGHORNE, ET AL., *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

THOMAS KEISTER GREER
110 Maple Avenue
Rocky Mount, Virginia

ALEXANDER N. APOSTOLOU
Shenandoah Building
Roanoke, Virginia

Counsel for Petitioner

WILLIAM N. ALEXANDER, II
DAVID ALEXANDER MELESCO
110 Maple Avenue
Rocky Mount, Virginia 24151

Of Counsel.

April 14, 1972

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	2
Question presented	2
Constitutional provision involved	2
Statement of the case	2
Reason for granting the writ	4
Conclusion	9
Appendix	1a

CITATIONS

CASES:

Hartford Steam Boiler Tire & Ins. Co. v. Harrison, 57 S. Ct. 838, 301 U. S. 459 (1937)	8
Hirabayashi v. United States, 320 U. S. 81, 100; 63 S. Ct. 1375, 1385 (1943)	7
Levy v. Louisiana, 88 S. Ct. 1509, 391 U. S. 68 (1968)	6, 7
Morey v. Dowd, 354 U. S. 457, 77 S. Ct. 1344 (1957)	5
Skinner v. Oklahoma, 316 U. S. 535, 541; 62 S. Ct. 1110, 1113 (1942)	8
Williamson v. Lee Optical Co., 348 U. S. 483, 75 S. Ct. 461 (1955)	5
Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064 (1886)	5

STATUTES:

CODE OF VIRGINIA tit. 63, §§ 63.1-233–63.1-234 (1950)	6
Constitution of the United States, Amendment XIV, Section 1	2, 4, 5
28 U.S.C. Section 1257(3)	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

JAMES AUBREY LANGHORNE, *Petitioner,*

v.

MAY LANGHORNE, ET AL., *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

The petitioner, James Aubrey Langhorne, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Virginia entered in this proceeding on January 17, 1972.[1]

OPINION BELOW

The opinion of the Supreme Court of the Commonwealth of Virginia is reported in 212 Va., at page 577, and appears in the appendix hereto.

---

[1] The respondents are May Langhorne and Rieta Langhorne DuManoir, the surviving substituted trustees under the will of D. Allan Langhorne, and Allen F. Langhorne and Beverley Langhorne Kirill the natural children of W. Devereux Langhorne.

JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Virginia was entered on January 17, 1972. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257 (3).

QUESTION PRESENTED

Whether a state court ruling that an adopted child cannot take as "issue" of an adoptive grandparent denies the adoptive child equal protection of the laws.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV, Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In 1912, D. Allan Langhorne executed his last will and testament, and in 1914 he executed a codicil to this will. Testator died in 1917 and these documents were offered and admitted to probate on October 22, 1917, as D. Allan Langhorne's last will and testament and codicil.

Testator left serviving him his widow, Effie B. Langhorne, and five children—two daughters, May Langhorne and Rieta L. DuManoir, and three sons. One

son, D. Allan Langhorne, Jr., died in 1934, unmarried and without any children surviving. A second son, C. D. Langhorne, died in 1964 and was survived by one son. The third son, W. Devereux Langhorne, died in 1969, survived by his widow, Christine Thomas Langhorne, two children by a former marriage, Allen F. Langhorne and Beverley L. Kirill, and by James Aubrey Langhorne, the petitioner herein who is a child of Christine and who was adopted by him on November 22, 1960.

In his will D. Allan Langhorne created a testamentary trust for the benefit of his widow and children during their lives and directed that after his wife's death that:

> ". . . whenever anyone of my children shall die, leaving issue surviving him, or her, and the youngest of such issue shall attain the age of 21 years, then the share or shares of my said estate upon which his, her, or their, parents' income was derived shall pass absolutely and in fee simple to such issue. . . ."

The testator's widow died in 1935. His son, W. Devereux Langhorne, who died in 1969, left surviving him two natural children, Allen F. Langhorne and Beverly L. Kirill, and an adopted child James Aubrey Langhorne. All three children are over the age of twenty-one. May Langhorne and Rieta Langhorne DuManoir, two of the respondents herein and the surviving substituted trustees under the testator's will, filed a Bill of Guidance in the Corporation Court of the City of Lynchburg naming the children of W. Devereux Langhorne as respondents and seeking the guidance and protection of the Court for making a distribution of W. Devereux Langhorne's share of the trust estate.